

REMARKS

35 USC § 103

The examiner rejected Claims 1, 4, 5, 7-12 and 14-37 under 35 U.S.C. 103(a) as being unpatentable over the NASD reference in view of Patterson et al. (US 5,797,002).

Claim 1, as amended, requires: "one or more computer systems, ... comprising an interface configured to provide a single, common point of entry for ... order delivery systems and quote entry systems ... instructions to manage order routing/execution to provide for orders ... either executions to the electronic trading system or routing of orders to external systems ... receive, ... a request to cancel an execution of one of the received orders of the market participant participating in the trading facility as an entity that has automatic executions of its orders ... determine whether or not the one of the received orders has not yet been executed by the electronic trading system ... cancel the order if the one of the received order has not been executed; and send a message to a system of the market participant to deny the request to cancel if the one of the received orders has been executed."

The examiner stated:

Regarding claim 1, NASD discloses an electronic market collector facility comprising a computer system having an interface to provide a single, common point of entry for coupling a plurality of order delivery systems and quote entry systems that send quotes to the computer system to the collector facility, a computer program that manages quotes received from the quote entry systems and orders received from the order delivery systems, that manages order routing/execution to provide for all orders received by the interface either a single point delivery of executions or routing of orders in accordance with parameters of the order (FF 14& 15), and that determines if one of the received orders has been executed by the collector facility (p. 11 par. 1, details describing order handling).

NASD does not explicitly show the system to receive a request to cancel execution of one of the received orders, to cancel the order if the order has not been executed, or to deny the request to cancel if the order has already been executed.

Patterson discloses an electronic trading system for consolidating orders from multiple sources (see abstract, col. 6 line 44+), wherein the system can receive a request to cancel execution of one of the received orders from a market participant (col. 7 line 24-30, customer sends request

to cancel order). The examiner points out that after receiving a request to cancel an order it would be matter of logic to either cancel the order or deny the cancel request if the order has already been executed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of the NASD reference to receive a request to cancel execution of one of the received orders and to cancel the order if the order has not been executed or to deny the request to cancel if the order has already been executed, as taught by Patterson, to enable market participants to modify placed orders in response to changing market conditions.

What is disclosed in NASD has previously been meticulously dissected and submitted. However, what is not disclosed in NASD and as acknowledged by examiner is "to receive by the computer system, a request to cancel execution of one of the received orders, to cancel the order if the order has not been executed, or to deny the request to cancel if the order has already been executed." For this the examiner relies on Paterson.

Indeed, not only does NASD fail to disclose this feature, NASD teach away from this feature and thus the purported combination to use a request to cancel. NASD describes a fairness mechanism by which ECN displayed order would be treated the same as market maker quotes.

SelectNet system, a system which is not an automatic execution system like SQES.⁴⁹ Market makers, however, are accessible through both systems. As proposed, Nasdaq believes that quotes of linked ECNs should also be automatically executed against by other market participants on the same terms as market makers. Without an equivalent execution mechanism, ECNs would have an unfair advantage. Market makers are thus placed at a competitive disadvantage with respect to the display and execution of limit orders. Further, the disparity in executions may provide market makers with an incentive to change their status from market makers to ECNs, at a cost to market liquidity. Customers seeking to obtain executions quickly may be placed at a disadvantage if one customer receives an automatic execution against a market maker, while another customer may have to wait for an ECN to respond.

This approach however gives rise to another problem, namely dual liability for which NASD neither recognized nor supplied an answer. Patterson likewise does not recognize the problem nor provide such an answer in the form of the claimed request to cancel processing.

Patterson discloses a wireless system that handles instructions, executed by floor brokers, to supplant conventional paper-based systems (col. 6, lines 44-46). In particular Patterson

illustrates a method and a system for wirelessly transferring orders, quotes and memos from a remote location (clerk station) to a floor broker (handheld device) on the floor of a financial exchange (col. 1, lines 10-13).

Patterson fails to disclose an electronic trading system, but instead is directed to order delivery for execution by floor brokers, and the combination with NASD is not evident, because in Paterson the actual decisions regarding trading occurs not by a computer system directing executions or order delivery to external systems, but by floor brokers. That is, in Patterson, the recipient of the received information is an individual (e.g. person) not a computer system of the type claimed. As such, Patterson fails to disclose "...receive, by the computer system at the collector facility from a market participant system, a request to cancel"

Patterson however fails to disclose the processing involving the use of a request to cancel, specifically, instructions to "...to receive ... from a market participant system, a request to cancel an execution of one of the received orders of the market participant participating in the trading facility as an entity that has automatic executions of its orders ... determine whether or not the one of the received orders has not yet been executed ... cancel the order if the ... received order has not been executed ... and send a message to a system of the market participant to deny the request to cancel if the one of the received orders has been executed."

Patterson's managing activities of the floor brokers involves many activities of which a request to cancel is but one. A floor manager can be responsive to requests from customers on status reports, execution against orders, quotations, and to requests to cancel orders (col. 7, lines 10-11) but the floor manager can only send and receive messages to and from the floor brokers hand-held device. Thus, what actually is disclosed by Patterson, in short, is merely a method and a device to. wirelessly, transfer information from a clerk station to a handheld device display.

In addition, there exists no auto-execution in the systems described by Patterson and hence a request to cancel of an order of the market participant participating in the trading facility as an entity that has automatic executions of its orders, is not suggested by Patterson and as mentioned above NASD teaches away from a request to cancel so the combination of NASD and Patterson logically would also teach away from use of the claimed request to cancel.

NASD in view of Patterson does not disclose all the above features of claim 1, nor render claim 1 obvious by combination of these references.

NASD in view of Patterson is likewise not suggested.

While it might be argued that NASD would have made provisions for canceling orders per se, what would not be apparent would be the processing involved with the request to cancel under the conditions required by claim 1, namely, receive ... a request to cancel an execution of one of the received orders of the market participant participating in the trading facility as an entity that has automatic executions of its orders; determine whether or not the one of the received orders has not yet been executed by the electronic trading system ... cancel the order if received order has not been executed and send a message to a system of the market participant to deny the request to cancel if the one of the received orders has been executed.

The position taken by the examiner regarding this feature is: **"The examiner points out that after receiving a request to cancel an order it would be matter of logic to either cancel the order or deny the cancel request if the order has already been executed."** Applicant disagrees. Logically, all that would necessarily need to follow from the combination of NASD and Patterson is a message acknowledging receipt of the request to cancel, because unlike claim 1, Patterson does not involve an electronic trading system, but instead floor brokers.

Regarding claims 14 and 20 these claims are allowable for analogous reasons as those given for claim 1. Regarding the dependent claims these claims are allowable at least because of their dependency on claims 1, 14 or 20.

It is believed that all the rejections and/or objections raised by the examiner have been addressed.

In view of the foregoing remarks, applicant respectfully submits that the application is in condition for allowance and such action is respectfully requested at the examiner's earliest convenience.

All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good

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Serial No. : 09/401,873
Filed : September 23, 1999
Page : 14 of 14

Attorney's Docket No.: 09857-0029001 / P1101US00

reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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